



DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection Request Submitted for Public Comment; Revisions to Coverage of Certain Preventive Services Under the Affordable Care Act

AGENCY: Employee Benefits Security Administration, Department of Labor

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. Currently, the Employee Benefits Security Administration is soliciting comments on the revision of the Coverage of Certain Preventive Services Under the Affordable Care Act information collection to reflect the new option of notifying the Department of Health and Human Services of the respondents' objections to providing coverage in response to the Supreme Court of the United States' interim order in connection with an application for an injunction in the pending case of Wheaton College v. Burwell. A copy of the information collection request (ICR) may be obtained by contacting the office listed in the ADDRESSES section of this notice.

DATES: Written comments must be submitted to the office shown in the Addresses section on or before [INSERT DATE THAT IS 60 DAYS FOLLOWING THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Direct all written comments regarding the information collection request and burden estimates to G. Christopher Cosby, Office of Policy and Research, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-5718, Washington, D.C. 20210. Telephone: (202) 693-8410; Fax: (202) 219-4745. These are not toll-free numbers. Comments may also be submitted electronically to the following Internet e-mail address: ebsa.opr@dol.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Patient Protection and Affordable Care Act, Public Law 111-148, (the Affordable Care Act) was enacted by President Obama on March 23, 2010 and amended by the Health Care and Education Reconciliation Act of 2010, Public Law 111-152 on March 30, 2010. The Affordable Care Act added section 2713 to the Public Health Service (PHS) Act and incorporated this provision into the Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code (Code). The Departments of Health and Human Services, Labor, and Treasury (the Departments) published interim final rules (2010 interim final rules) on July 19, 2010 to require non-grandfathered group health insurance coverage to provide benefits for certain preventive services without cost sharing, including benefits for certain women's preventive health services as provided for

in comprehensive guidelines supported by the Health Resources and Services Administration (HRSA).

On August 1, 2011, HRSA adopted and released guidelines for women's preventive health services, including contraceptive services. On August 3, 2011, the Departments amended the 2010 interim final rules (2011 amended interim final rules) to provide HRSA with the authority to exempt group health plans established or maintained by religious employers (and group health insurance coverage provided in connection with such plans) from the requirement to cover contraceptive services consistent with the HRSA guidelines. The 2011 amended interim final rules specified a definition of religious employer. HRSA exercised its authority in its guidelines to exempt plans established or maintained by religious employers (and group health insurance coverage provided in connection with such plans) from the requirement to cover contraceptive services.

On February 6, 2013, the Departments published proposed rules that proposed to simplify and clarify the definition of religious employer and also proposed accommodations for health coverage established or maintained or arranged by certain nonprofit religious organizations with religious objections to contraceptive services (eligible organizations). The rules proposed that, for insured plans, the health insurance issuer providing group health insurance coverage in connection with the plan would be required to assume sole responsibility, independent of the eligible organization and its plan, for providing contraceptive coverage to plan participants and beneficiaries without cost sharing, premium, fee, or other charge to plan participants or beneficiaries or to the eligible organization or its plan. In the case of self-insured plans, the proposed

regulations presented potential approaches under which the third party administrator of the plan would provide or arrange for a third party to provide separate contraceptive coverage to plan participants and beneficiaries without cost sharing, premium, fee, or other charge to plan participants or beneficiaries or to the eligible organization or its plan. The Departments received over 400,000 comments (many of them standardized form letters) in response to the proposed regulations.

After consideration of the comments, the Departments published final regulations on July 2, 2013. A contemporaneously-issued HHS guidance document extended the temporary safe harbor from enforcement of the contraceptive coverage requirement by the Departments to encompass plan years beginning on or after August 1, 2013, and before January 1, 2014. This guidance included a form to be used by an organization during this temporary period to self-certify that its plan qualifies for the temporary enforcement safe harbor. In addition, HHS and the Department of Labor also issued a self-certification form, EBSA Form 700, to be executed by an organization seeking to be treated as an eligible organization for purposes of an accommodation under these final regulations. This self-certification form was provided for use with the accommodations under the July 2013 final regulations, after the expiration of the temporary enforcement safe harbor (that is, for plan years beginning on or after January 1, 2014). The rules also provide that the third party administrator and issuer that is required to provide or arrange payments for contraceptive services must provide plan participants and beneficiaries with written notice of the availability of separate payments for contraceptive services contemporaneous with, but separate from, any application

materials distributed in connection with enrollment for group health coverage for each plan year to which the accommodation is to apply.

On July 3, 2014, the Supreme Court of the United States issued an interim order in connection with an application for an injunction in the pending case of Wheaton College v. Burwell, ruling that, “[i]f [Wheaton College] informs the Secretary of Health and Human Services in writing that it is a non-profit organization that holds itself out as religious and has religious objections to providing coverage for contraceptive services, the [Departments of Labor, Health and Human Services, and the Treasury] are enjoined from enforcing against [Wheaton College]” certain provisions of the Affordable Care Act and related regulations requiring coverage without cost-sharing of certain contraceptive services “pending final disposition of appellate review” (Wheaton order). The order stated that Wheaton College need not use EBSA Form 700 or send a copy of the executed form to its health insurance issuers or third party administrators to meet the condition for this injunctive relief. The order also stated that it neither affected “the ability of [Wheaton College’s] employees and students to obtain, without cost, the full range of FDA approved contraceptives,” nor precluded the Government from relying on the notice it receives from Wheaton College “to facilitate the provision of full contraceptive coverage under the Act.”

On August 27, 2014, the Departments issued interim final regulations (79 FR 66617) in light of the Supreme Court’s interim order concerning notification to the Federal government that an eligible organization has a religious objection to providing

contraceptive coverage, as an alternative to the EBSA Form 700, and to preserve participants' and beneficiaries' access to coverage for the full range of FDA-approved contraceptives, as prescribed by a health care provider, without cost sharing, which is also consistent with the Supreme Court's order.

On August 27, 2014, the Office of Management and Budget (OMB) approved the changes as a revision to OMB Control Number 1210-0150 under the emergency procedures for review and clearance in accordance with the Paperwork Reduction Act of 1995 (P.L. 104-13, 44 U.S.C. Chapter 35) and 5 C.F.R. 1320.13. OMB's approval of the revision currently is schedule to expire on February 28, 2015.

II. Current Actions.

This notice requests public comment pertaining to the Department's request for extension of OMB's approval of its revision to OMB Control Number 1210-0150 relating to the Coverage of Certain Preventive Services Under the Affordable Care Act. After considering comments received in response to this notice, the Department intends to submit an ICR to OMB for continuing approval. No change to the existing ICR is proposed or made at this time. The Department notes that an agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a valid OMB control number. A summary of the ICR and the current burden estimates follows:

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Coverage of Certain Preventive Services Under the Affordable Care Act.

Type of Review: Revision of a currently approved collection of information.

OMB Number: 1210-0150.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Respondents: 61.

Frequency of Responses: Once.

Responses: 61.

Estimated Total Burden Hours: 51

III. Desired Focus of Comments

The Department of Labor (Department) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Dated: December 5, 2014.

Phyllis C. Borzi, Assistant Secretary
Employee Benefits Security Administration

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